

# **VICTIMS AND WITNESSES HAVE RIGHTS!**

## **INTRODUCTION**

Crime hurts! As a victim of crime, you may experience significant injury, loss, confusion and life-disruption. Shock, disbelief, fear, vulnerability, anger, and frustration may result. At the same time, you find it necessary to become involved with a variety of community agencies.

The community has a legal and moral responsibility to respond to criminal victimization in order to preserve order and protect the community. *Victims and witnesses of crime are essential partners in this community effort.* Without your participation and cooperation as a citizen, the criminal justice systems cannot serve the community. However, the complexity and limitations of these agency processes can become sources of additional frustration for you as a victim or a witness.

This booklet has been prepared to assist you in understanding your rights and to provide information about the roles of various public and private agencies. Your informed participation is vital to our state's system of criminal justice.

## **UTAH COUNCIL ON VICTIMS OF CRIME**

The criminal justice systems have historically been insensitive to the needs and concerns of crime victims, frequently adding to the suffering of those already harmed by criminal acts. In order to address these problems, the Utah Council on Victims of Crime was established and given the responsibility of coordinating statewide efforts on behalf of victims. The Council is a bi-partisan body with representation from across the State of Utah. Utah law also establishes a Victims' Rights Committee in each of the eight judicial districts in the state. The purpose of these committees is to address specific complaints and problems within their respective judicial districts. The Chairman of each of these District Victims' Rights Committees, along with other select victim advocates and agency representatives, serves on the Utah Council on Victims of Crime. The Council provides training and assistance to victims' programs in prosecutors' offices, police departments and other agencies across the state.

The Council also has become a voice to improve victims' services and rights in Utah. Significant legislation and court rule changes have been enacted to improve the status of victims. Examples of these changes are creation of the Office of Crime Victim Reparations, Crime Victims' Bill of Rights, and the Utah Victims' Constitutional Amendment and enabling legislation. Court rules to require the consideration of dangerousness at bail hearings and "Rape Shield" for victims of sexual assault have also been enacted.

Through the various Victims' Rights Committees in the judicial districts, victims' concerns will be monitored throughout the state. Individuals may bring violations of victims' rights to the attention of the District Victims' Rights Committees. A form entitled "Victim/Witness Complaints" has been developed for this purpose. For additional information on this complaint procedure see the "Complaint Procedures" section of this brochure. The Utah Council reviews all complaints which have not been resolved by the local District Victims' Rights Committee.

Members of the Utah Council on Victims of Crime and the various District Victims' Rights Committees are committed to improving the status of crime victims in the state of Utah. Participation in the various projects of the Council is encouraged and individuals interested in becoming involved in the victims' movement should contact the Office of Crime Victim Reparations at 238-2360 or 1-800-621-7444.

## **VICTIM AND WITNESS BILL OF RIGHTS**

The Utah Legislature has passed a number of provisions in a continuing attempt to afford victims the rights they deserve. In 1994 numerous groups and citizens rallied together to support and pass a Victims' Rights Amendment to the state constitution. These efforts have culminated in working toward the end result we all are striving to reach, "balancing the scales of justice."

A summary of those rights are as follows:

1. Victims have the right "to be treated with fairness, respect, and dignity, and to be free from harassment and abuse throughout the criminal justice process."
2. Victims have rights in relation to "important criminal justice hearings" which include preliminary hearings, arraignments, disposition of charges, conditions of release/bail hearings, trials, sentencing hearings, and parole hearings.
  - a) Victims have the right, upon request, to be informed of all important criminal justice hearings.
  - b) Victims have the right to be present at and to be heard at arraignments, disposition of charges, conditions of release/bail hearings, and sentencing hearings.
  - c) Victims have the right to be present at (but not to be heard at) preliminary hearings and trials.
  - d) These rights apply to all felonies in adult courts and to juvenile cases involving offenses that would be felonies if committed by an adult.
3. Victims and witnesses have the right to reasonable employer intercession services to minimize loss of pay and benefits.
4. Victims and witnesses have the right to be informed as to the level of protection available to protect them from intimidation and harm.
5. Victims and witnesses have the right to a secure waiting area that does not require them to be in close proximity to defendants and offenders.
6. Victims have a right to privacy and should not be forced to disclose their address, telephone number, place of employment, or other locating information, without compelling reason.
7. Victims have the right to have a sentencing judge, for the purpose of imposing an appropriate sentence, receive and consider reliable information concerning the background, character and conduct of those convicted.
8. Victims have the right to restitution when appropriate and may also be eligible for reparations.
9. Victims have a right to a speedy trial and disposition of charges.

### *Additional Rights for Children*

1. The right to have interviews relating to a criminal prosecution kept to a minimum.
2. The right to be questioned in a manner that is appropriate to the child's age and understanding. The right not to be questioned in a manner that implies they are responsible for the inappropriate behavior of adults.

3. The right to protection from physical and emotional abuse during their involvement with the criminal justice process.
4. The right to be informed of available community resources and how to gain access to those resources.

## **AGENCY RESPONSIBILITIES**

Agencies have certain responsibilities to see that victims' and witnesses' rights are complied with.

### *Law Enforcement Responsibilities*

- represent link between the victim and available services
- provide information regarding the level of protection from intimidation and harm available to victims and witnesses and the sources of that protection
- provide information about the criminal justice process and the role of victims and witnesses in that process
- provide clear explanations regarding legal proceedings
- inform victim of State Crime Victim Reparations program and provide needed assistance in understanding procedures for obtaining reparations
- safely maintain property held as evidence and return that property as soon as it is no longer needed as evidence
- establish policies and procedures to encourage a speedy disposition of criminal cases

### *Prosecutors' Responsibilities*

- provide information regarding sources of protection from threats and harassment
- provide information about the criminal justice process and the role of victims and witnesses in that process
- provide clear explanations regarding legal proceedings
- inform victim of State Crime Victim Reparations program and provide needed assistance in understanding procedures for obtaining reparations
- provide individual with timely notice of court appearances as well as postponements
- inform parent/guardian of community resources available to children involved in crime
- establish policies and procedures to encourage speedy disposition of criminal cases
- Inform victim within seven days of filing felony charges

- after filing felony criminal charges and upon victim's request, provide victim notice of important hearings
- when appropriate, introduce a photograph of the victim taken before the homicide
- provide restitution information to the court, including victims' names and claims
- provide information regarding the level of protection from intimidation and harm available to victims and witnesses and the sources of that protection

### *Courts' Responsibilities*

- provide information about the criminal justice process and the role of victims and witnesses in that process
- provide clear explanations regarding legal proceedings
- provide secure waiting areas away from defendant and defendant's family while victims and witnesses wait to testify
- at sentencing, order defendant to pay restitution to victim
- preserve the victim's right to a speedy trial and disposition of charges
- appoint a person to establish and chair a District Victims' Rights Committee within each judicial district
- consider victim notification when scheduling hearings
- preserve the right of a victim to be present and heard at certain important hearings in felony cases in both district and juvenile court
- designate victim's representative where the victim is deceased or incapacitated
- may allow minor victims to exercise their rights individually or by proxy
- ensure that the victim has the opportunity to be heard in connection with defendant's sentencing
- preserve privacy rights regarding victims' personal identifying information, including address, telephone number, etc.
- consider the impact on the victim when presented with a motion for a continuance
- make written findings of the reasons for granting a continuance
- ensure that age-appropriate language is used in sexual abuse cases during examination and cross-examination of a victim or witness under the age of 14

### *Office of Crime Victim Reparations Responsibilities*

- compensate victims of violent crime who suffer physical or psychological injury
- provide training to allied agencies and publicize the program across the state
- provide assistance through federal grants to public and non-profit organizations for direct and indirect services to victims of crime
- act as a broker of victim services and provide networking of victim services

### *State Human Services Responsibilities*

- investigate allegations of abuse or neglect and provide protection
- assist in obtaining needed resources including counseling, medical or financial assistance
- arrange for shelter or foster care for children as needed
- notify victims of the State Crime Victim Reparations program
- provide protection against unnecessary interviewing of child victims

### *Corrections Responsibilities*

- assist victims when threats are made
- assist victims in understanding correction system
- assist in determining restitution amounts, collecting and disbursing
- inform victims of the State Crime Victim Reparations program
- upon proper request, notify victims of offender's release from halfway house, work release, rehabilitation program, state hospital or escape
- provide secure waiting areas away from offender and offender's family while victims wait to testify at parole hearing
- provide information regarding the level of protection from intimidation and harm available to victims and witnesses and the sources of that protection

### *Board of Pardons & Parole Responsibilities*

- order a “no contact clause” or take punitive action against offender (if under the jurisdiction of the Board) if the victim is threatened

- inform victims of their role with the Board prior to a parole hearing
- assist victims with their case
- order restitution when applicable
- inform victims of the State Crime Victim Reparations program and assist in the application process
- notify victims of hearings in a timely manner
- inform victims of offenders' status in prison and release date, if requested

#### *Judicial District Victims' Rights Committees Responsibilities*

- establish and chair a committee with a membership consisting of a county attorney, a sheriff, a corrections field services administrator, a victim advocate, a municipal attorney, a municipal chief of police, and other representatives as appropriate
- meet a minimum of twice each year
- address the concerns of victims and other interested parties regarding the rights
- review the progress and problems relating to victims rights as established by the Utah Constitution and the Utah Code
- submit minutes of the committee meetings to the Commission on Criminal and Juvenile Justice and the Office of Crime Victim Reparations
- inform victims of the statute's provision which allows for an action for injunctive relief to be brought against any individual and the government entity that employs the individual for failure to provide the rights afforded victims under the Utah Constitution and Utah Code

## **COMPLAINT PROCEDURES**

### *Complaint Process*

1. Complaints must be submitted in writing and delivered to the Office of Crime Victim Reparations or to the appropriate District Victims' Rights Committee. If the complaint first goes to the District Victims' Rights Committee, the Chair shall immediately forward a copy to the Office of Crime Victim Reparations.
2. The Office of Crime Victim Reparations will acknowledge receipt of complaint within five working days and forward the complaint to the District Victims' Rights Committee Chair. Acknowledgment will be in the form of a letter to the complainant indicating the date the complaint was referred to the District Victims' Rights Committee Chair. Each complainant will be sent a copy of *Victims and Witnesses Have Rights*.

3. The District Victims' Rights Committee will respond to the complainant within 60 days of receipt of the complaint. If a hearing before the Committee is deemed appropriate, it will be held within 90 days. Time limits may be adjusted for extenuating circumstances.
4. If the District Victims' Rights Committee is unable to resolve the complaint within the prescribed time, a designated subcommittee from the Utah Council on Victims will review the complaint.
5. The District Victims' Rights Committee is responsible for providing the following information to the Office of Crime Victim Reparations:
  - a) copy of the complaint (if not first received or sent to Crime Victim Reparations)
  - b) date of complaint hearing
  - c) disposition of complaint hearing

#### *Complaint Hearing*

1. The District Victims' Rights Committee may hold public hearings.
2. A quorum consisting of one half the District Victims' Rights Committee membership shall be present to hear the complaint.
3. An individual may testify in writing, appear in person or be represented by another individual at the complaint hearing.
4. The individual or agency named in the complaint may respond in writing, appear in person or be represented by another individual.
5. If deemed appropriate by the committee, parties will be allowed to respond to the testimony. Time limits shall be set for the rebuttals before the hearing begins. Parties will be excused before committee discussion. Both parties will be informed in writing within 60 days of the hearing of any committee action.
6. If the person or agency fails to respond or if the issue cannot be resolved at the District Victims' Rights Committee hearing, the matter shall be referred to the Utah Council on Victims of Crime for further review.

#### *Complaint Resolutions*

1. The following are options available to the District Victims' Rights Committees:
  - a) Refer complaint to appropriate agency.
  - b) Request that the agency resolve the problem by adhering to victims' rights statutes.
  - c) Use any method allowed by law to ensure that recommendations are implemented.
  - d) Decide to take no action due to lack of merit or authority.
  - e) Refer to Utah Crime Victims Legal Clinic.
2. Each victim will be sent a copy of the complaint procedures of the committee.
3. Victims will be informed that they have the right to pursue an injunctive relief when a violation of their rights has occurred.

## **OTHER VICTIM RESOURCES**

### *Victim Reparations*

If you are the victim of a violent crime, you may be eligible for compensation. Individuals who qualify for the program are victims of violent crime who have suffered physical or psychological injury as well as dependents of deceased victims. To qualify, the victim must report the crime to police and must cooperate with law enforcement and prosecution. Awards can be made up to \$25,000 for medical care, mental health counseling, loss of earnings, burial expenses, dental care, and loss of support to dependents. No awards can be made for property losses, except property that is essential to the health and safety of the victim. In cases involving homicide, attempted homicide, aggravated assault, and DUI, awards can be made up to \$50,000. Victims must exhaust all collateral sources such as Medicare, Medicaid, insurance, and worker's compensation, before an award will be made. Funding of the program comes from criminal offenders through surcharges and fines.

### *Victim Assistance*

Victims of Crime Act (VOCA) grants are federally funded awards available to private and public agencies that provide direct services to crime victims. Services available include crisis intervention, therapy, support groups, crisis hotline, shelter, criminal justice support, and emergency legal assistance. These services are housed within city and county prosecutors' offices, police departments, family support centers, children's justice centers, rape crisis centers, domestic violence shelters and mental health organizations

S.T.O.P. Violence Against Women Act (VAWA) grants, also federally funded awards, encourage the development and implementation of effective law enforcement and prosecution strategies to combat violent crimes against women and the development and enhancement of victim services in cases involving crimes against women. VAWA grants are awarded to law enforcement agencies, prosecutors, courts, and to nonprofit victim services agencies.

### *Civil Legal Remedies Available to Crime Victims*

Civil litigation is an additional meaningful option for recovery from emotional and physical damages which have resulted from the crime. In pursuing civil litigation, you are responsible to hire your own attorney.

### *Restitution*

Utah law provides that the judge shall order that the offender make restitution when appropriate. Restitution is ordered in most cases and can help cover the cost of out of pocket expense such as medical and property losses. While restitution is appropriate in most cases, there is no guarantee that you will receive payments in a timely manner -- or at all. Most offenders have few financial resources available to them. If the offender fails to make restitution payments, there are legal options available to pursue.

### *VINE (Victim Information and Notification Everyday)*

VINE provides automated telephone notification of an offender's status in jail or prison and also provides information on court hearings. This notification empowers victims by supplying information that helps them participate in the criminal justice process as well as information that may alert victims of the need to take extra precautions when an offender is released from jail or prison. Any person may register for this free notification service by calling 1-877-UT-4-VINE.

### *Utah Crime Victims Legal Clinic*

The Utah Crime Victims Legal Clinic provides free legal representation to crime victims when victims' rights issues are at stake.<sup>1</sup> The Legal Clinic is available to serve victims of all types of crime throughout the state of Utah.

If you are the victim of a crime in Utah, the parent or legal guardian of a victim who is under the age of 18, or the family member of a crime victim who died because of a crime or was severely disabled because of it, the Legal Clinic may be able to help as you go through the criminal justice system.

The Legal Clinic can provide referrals, connect you with important services and help you to use those services, and represent you in the criminal justice system to protect your legal rights. All Utah Crime Victims Legal Clinic services are free of charge. For more information, visit the Legal Clinic's website at [www.utahvictimsrights.org](http://www.utahvictimsrights.org).

The Utah Crime Victims Legal Clinic:

1. provides free legal services for crime victims in criminal district, justice, juvenile and appellate courts;
2. recruits and trains pro bono attorneys and law students to provide legal services to victims; and
3. provides education to criminal justice professionals about victims' rights.

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**For further information or to obtain copies of the Victims and Witnesses Have Rights brochure, contact the State of Utah Office of Crime Victim Reparations in writing at 350 East 500 South, Suite 200, Salt Lake City, Utah 84111; or call the CVR at (801) 238-2360 in Salt Lake County and toll free 1-800-621-7444 for all other areas of Utah.**

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<sup>1</sup> The Legal Clinic does not accept all cases. Priority will be given to cases where victims' rights, as outlined in this brochure, are being denied or violated.